

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Mark Kiroff,

Civ. No. 06-0979 (PAM/RLE)

Petitioner,

v.

MEMORANDUM AND ORDER

R.L. Morrison, Warden,

Respondent.

This matter is before the Court on a Petition for Writ of Habeas Corpus and Petitioner's letter dated April 14, 2006. The Petition asks the Court to order Respondent to reconsider when Petitioner should be assigned to a community confinement center ("CCC"). Petitioner asks in his letter that the Court grant his Petition on the basis of Fults v. Sanders, – F.3d –, 2006 WL 870745 (8th Cir. Apr. 6, 2006).

Petitioner is incarcerated at the Federal Prison Camp in Duluth, Minnesota. He has a projected release date of October 5, 2006. Petitioner filed his Petition on March 6, 2006, asking the Court to order Respondent to consider transferring him to a CCC for the last six months of his confinement. Specifically, he challenges the February 14, 2005, regulation of the Bureau of Prisons ("BOP") that limits the portion of a prisoner's sentence that can be served in a CCC.

In Fults, the Eighth Circuit Court of Appeals held that the February 14, 2005, regulation is invalid because it conflicts with 18 U.S.C. § 3621(b), which gives broad discretion to the BOP to determine the location of an inmate's imprisonment. 2006 WL 870745, at *2. As

Respondent has acknowledged in his Response to the Petition, Fults is dispositive of this case, and the Petition is therefore granted. Accordingly, **IT IS HEREBY ORDERED** that:

1. The Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 (Docket No. 1) is **GRANTED**; and
2. Respondent is directed to reconsider immediately the date when Petitioner should be assigned to a CCC in light of the criteria set forth in 18 U.S.C. § 3621(b) and without regard to 28 C.F.R. §§ 570.20 and 570.21.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: April 20, 2006

s/ Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge